IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25-02-2005

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE S.R. SINGHARAVELU

O.S.A.NOs.288 to 292 OF 2004 &
CMPs.20362 to 20366/04

Desert Valley Medical Inc.,
511 Amigos Drive, Redlands,
CA,USA 92373
rep. by its duly constituted
Power of Attorney G. Arumugam .. Appellant in (Plaintiff) the OSAs 288 to 291 of 2004

Vs.

A. Jayachandra Reddy
JVL Towers,
No.117, IV Floor,
Nelson Manickam Road,
Aminjikarai, Chennai 29. .. Respondent in (Defendant) the OSAs 288 to 291 of 2004

OSA.No.292/2004:-

Desert Valley Medical Inc.,
511 Amigos Drive, Redlands,
CA,USA 92373
rep. by its duly constituted
Power of Attorney G. Arumugam .. Appellant (Plaintiff)

vs

1. A. Jayachandra Reddy
JVL Towers,
No.117, IV Floor,
Nelson Manickam Road,
Aminjikarai, Chennai 29. .. Respondent/ Defendant

2. The Life semi Conductors (p) Ltd
Ground Floor, JVL Plaza,
Door No. 501, Mount Road, Chennai 18.

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3. Briij Data Link (p) Ltd
5th Floor at JVL Plaza,
Door No. 501, Mount Road, Chennai 18.

4. Customer First Services (p) Ltd.
6th Floor, JVL Plaza,
Door No. 501, Mount Road, Chennai 18. ...Garnishees/ Respondents

Appeals filed under Order 36 Rule 11 of the O.S. rules read with Clause 15 of the Letters Patent against the common order passed by the learned single Judge in Appln.Nos.3646, 628, 627, 3001 & 3003 of 2004 etc. in C.S.No.609 of 2004 dated 2.12.2004.

For Appellant : Mr.P.S. Raman
Senior Counsel for
Mr.P.R. Raman

For Respondent : Mr. Habibulla Badsha
Senior Counsel for
Mr.M. Vaidyanathan

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COMMON JUDGMENT

P.K. MISRA, J

Plaintiff is the Appellant against an order passed by a learned single Judge rejecting the plaint by exercising jurisdiction under Order VII Rule 11 of the Code of Civil Procedure. The connected appeals are filed against the consequential orders of rejection of the applications for injunction and other interim reliefs.

2. The basic allegations in the plaint are as follows :-

Plaintiff is a company incorporated under the laws of the State of California in the United States of America. Defendant, Jayachandra Reddy, is a citizen of United States of America since 1998. The defendant and his wife ordinarily reside at Chennai. Their daughter is married to one Girish Reddy, who settled down in Los Angeles. The defendant and his wife very often visit U.S.A.. Girish Reddy was the Chief Operating Officer of the plaintiff company and Dr. Prem Sagar Reddy, the Chairman of the Company, reposed complete trust and confidence on the said Girish Reddy. It was discovered that Girish Reddy had embezzled the funds of the plaintiff company. Subsequently, Girish Reddy and his family members and the defendant and his wife had agreed to refund the entire misappropriated fund. A promissory note was prepared in the name of Girish Reddy, his wife, his parents and parents-in-law. However, the promissory note was signed only by Girish

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Reddy, his wife and his parents, but it was not signed by the defendant and his wife. The plaintiff waited for repayment as per the promissory note, but except a sum of US$ 84,160, which was paid on 12.11.1998, no further payments had been made. At that stage, the plaintiff filed a Civil Suit against Girish Reddy, his wife and his parents and such suit was decreed by the Superior Court of the State of California, County of Los Angles. Thereafter, the records and the bank accounts of the Med-Tech USA account revealed that atleast a sum of US$250,000 had been transferred from such account to the personal account of the defendant. Immediately notice was issued to the defendant, but the defendant did not take any step to settle the matter. Thereafter, the plaintiff instituted a suit against the defendant before the Superior Court of the State of California. The defendant after being served with the suit summons, had engaged a legal counsel. In the said suit, oral and documentary evidence were adduced on behalf of the plaintiff. The defendant opted not to adduce any evidence. However, the defendant was summoned for cross-examination by the plaintiff and accordingly video deposition was taken on various dates in March, 2003 and the transcripts of such deposition of the defendant during the pre-trial discovery of proceedings were also adduced in evidence on behalf of the plaintiff. The trial judge heard the arguments advanced on behalf of the plaintiff. However, the defendant and his counsel elected not to address any argument. Ultimately, the Presiding Judge of the Superior Court of the State of California pronounced the judgment on 18.4.2003 holding that the plaintiff was entitled to a sum of US$1,315,840 along with interest at 7% per annum. This judgment rendered by the United States trial court had not been challenged by the defendant. The defendant, who suffered a money decree, was not available for examination of his assets as a judgment debtor and has left United States of America for fear of enforcement of decree against him. The defendant and his wife had shifted permanently to Chennai. The defendant and his wife have purchased several immovable properties within and outside Chennai by substantially utilising the funds illegally misappropriated. Since the United States of America and the Republic of India are not reciprocating countries under Section 44A of the Code of Civil Procedure,1908, the decree of the Superior Court of the State of California, County of Los Angeles, is not directly executable. Therefore, the plaintiff has instituted a suit under Section 13 of the Code of Civil Procedure for the enforcement of the rights conferred by the decree of the American Court. Accordingly, the plaintiff has prayed for directing the defendant to pay a sum of US $1,315,840 as directed by the judmgent of the Superior Court of the State of California with future interest.

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3. During pendency of such suit, the plaintiff also filed an application for interim injunction restraining the defendant from alienating the properties and for other interim reliefs.

4. Initially, interim orders have been passed. Subsequently, after appearance, the defendant filed several applications to vacate the interim orders and the defendant also filed an application purported to be one under Order VII Rule 11 C.P.C for rejection of the plaint.

5. The allegations made by the defendant in the counter affidavits filed along with the applications for vacating the interim orders are substantially as follows :-

The defendant has indicated that there was no conspiracy between him and Girish Reddy as alleged by the plaintiff. It was indicated that the judgment of the U.S. Court is not conclusive in view of the provisions contained in Section 13(b),(d),(e) and (f) of C.P.C. The defendant has denied any conspiracy and has submitted that he cannot be held responsible for the alleged actions of Girish Reddy. The suit has been filed against the defendant only when it transpired that Girish Reddy was not having sufficient assets to satisfy the decree. It is also claimed that the suit filed against the defendant in U.S. Court is barred by limitation. Other pleas like non-joinder of necessary parties, bar under Section 11 and Order II Rule 2 of CPC have also been raised.

6. Learned single Judge, after considering all the applications including the one relating to non-maintainability of the suit in the light of Order VII Rule 11 of C.P.C., has held that the suit is liable to be rejected under Order VII Rule 11 of C.P.C. as foreign decree on the basis of which the plaintiff was claiming right was not enforceable in accordance with the provisions contained in Section 13 of C.P.C. It has been specifically held that the foreign decree was not based on merit, was not in accordance with the principles of natural justice and was in breach of the provisions of the Limitation Act as well as Order II Rule 2 of C.P.C. Accordingly, the suit has been rejected by invoking the provisions contained in Order VII Rule 11 of C.P.C., and consequently, all the interim orders passed in favour of the plaintiff have been vacated.

7. O.S.A.No.288 of 2004 has been filed against the order rejecting the suit under Order VII Rule 11 of C.P.C.; and other connected O.S.As have been filed against the consequential reliefs prayed for in other interim applications.

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8. The main question which is required to be considered is as to whether the learned single Judge was justified in rejecting the plaint by invoking the provisions contained in Order VII Rule 11 of C.P.C., which is extracted hereunder :-

> "11. Rejection of plaint.- The plaint shall be rejected in the following cases:-
>
> (a) where it does not disclose a cause of action;
>
> (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
>
> (c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
>
> (d) where the suit appears from the statement in the plaint to be barred by any law;
>
> (e) where it is not filed in duplicate;
>
> (f) where the plaintiff fails to comply with the provisions of rule 9."

9. While construing the aforesaid aspect, the enforceability of the foreign decree was questioned and it is therefore convenient to extract Section 13 of C.P.C., which is as follows :-

> "13. When foreign judgment not conclusive.- A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except -
>
> (a) where it has not been pronounced by a Court of competent jurisdiction;
>
> (b) where it has not been given on the merits of the case;
>
> (c) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of India in cases in which such law is applicable;
>
> (d) where the proceedings in which the judgment was obtained are opposed to natural justice;
>
> (e) where it has been obtained by fraud;
>
> (f) where it sustains a claim founded on a breach of any law in force in India."

10. A bare perusal of the provisions contained in Order VII Rule 11 of C.P.C makes it clear that clauses (a), (b), (c), (e) and (f) are not at all applicable. Rejection of the plaint is

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obviously in exercise of jurisdiction under Order VII Rule 11(d). Order VII Rule 11(d) envisages that the plaint can be rejected, if from the statement in the plaint it is apparent that the suit is barred by any law.

11. In (2003) 1 SCC 557(SALEEM BHAI AND OTHERS v. STATE OFMAHARASHTRA AND OTHERS) while construing the scope of Order VII Rule 11 of C.P.C., it was laid down that the trial court can exercise the power under Order VII Rule 11 CPC at any time before the conclusion of the trial and for the purpose of deciding an application under Rule 11(a) & (d) of Order VII CPC, the averments in the plaint are germane.

12. In fact this position is very much clear from a bare perusal of Order VII Rule 11 itself. Therefore, the question as to whether the plaint is liable to be rejected by invoking Order VII Rule 11 has to be considered by referring to the plaint and may be the documents which are filed along with the plaint, but not by reference to any statement indicated in the written statement or by reference to any other document which does not form part of the plaint.

13. Learned Senior Counsel appearing for the respondent has submitted with much vehemence and less conviction that while deciding the question regarding maintainability of the plaint in the present case, the questions arising under Section 13 of C.P.C., cannot be overlooked. The provisions of Section 13, which have already been extracted, only relate to the conclusiveness of a foreign judgment. It has been vehemently contended by him that the foreign judgment in question in the present case had not been given on merits of the case and moreover, the proceedings in which the judgment was obtained are opposed to natural justice and the judgment had been obtained by fraud and it sustains a claim founded on a breach of any law in India.

14. Learned Senior counsel for the appellant has combated such submission made by the learned Senior Counsel for the respondent by contending that the foreign judgment itself indicates that it was given on merits of the case and it was not opposed to the principles of natural justice inasmuch as summons had been served and the defendant himself had appeared through counsel. Similarly, it has been submitted by him that there is nothing to indicate that the foreign judgment was obtained by fraud nor the judgment has sustained a claim founded on a breach of any law in India.

15. In Application No.3646 of 2004, filed by the defendant praying for rejection of plaint, it has been contended that the judgment of the Superior Court of California discloses

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that such judgment was not on merit and was based on mere surmise and the evidence of Girish Reddy had not been taken into consideration. It was further contended that the statement of other persons examined had not been considered and there was complete non-application of mind on the part of the Superior Court of California. It was further indicated that "... the judgment is also vitiated by the fraud committed by the Respondent/Plaintiff herein in not disclosing to the Hon'ble Superior Court of California, Los Angeles, that a decree had been obtained against Girish Reddy as early as on 17.7.2001 in respect of the same transaction. It is also in violation of the principles of natural justice." It was also indicated that the judgment of the foreign court was not on merit and the proceedings in the judgment were opposed to the principles of natural justice. Further ground was taken that the claim was founded on a breach of any law in India inasmuch as the claim made before the Superior Court of California was barred by the principles of res judicata contained in Section 11 and Order 2 Rule 2 & 3 of the CPC.

16. Learned single Judge has observed that in the judgment of the foreign court, there was no discussion about the evidence and a bare reading of the judgment indicated that it was only an ex-parte judgment and not a judgment rendered on merits. Learned single Judge relied upon a decision of the Supreme Court reported in (2001) 5 SCC 265 {INTERNATIONAL WOOLLEN MILLS v. STANDARD WOOL (U.K.) LTD.,} in support of the aforesaid conclusion.

17. We have carefully gone through the aforesaid decision of the Supreme Court wherein it was observed that the foreign judgment in that particular case was not conclusive. However, it has to be remembered that the decision of the Supreme Court was not at the stage of Order VII Rule 11 CPC, but after conclusion of the trial. We have carefully seen the averments in the plaint and even perused the judgment passed by the foreign court. From the averments made in the plaint, it cannot be concluded that the judgment was not on merits. Whether the foreign judgment relied upon by the plaintiff in support of his case is conclusive between the parties is a matter which can be decided only at the end of the trial and from the allegations made in the plaint or even on a bare perusal of the judgment of the foreign court it cannot be concluded that the judgment is not conclusive. Moreover, even assuming that a judgment is not conclusive under Section 13, the plaintiff would be required to independently prove his case de hors the judgment of the foreign court. If the judgment of the foreign court is found to be conclusive, the plaintiff would be required to prove independently the validity of his claim. On the other hand, if the court comes to a conclusion that such judgment is not conclusive, the

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plaintiff may still establish his case by adducing appropriate evidence. In other words, such a matter cannot be decided at the threshold by taking recourse to Order VII Rule 11 CPC, but an issue has to be struck in the matter and the matter has to be decided.

18. The criticisms which are levelled against the foreign judgment by the learned single Judge do not naturally follow from the averments made in the plaint or even from the recitals made in the foreign judgment. Therefore, the learned single Judge misdirected himself by entering into such question at this stage. Similarly, the question as to whether the foreign judgment was obtained by fraud or sustained a claim founded on a breach of any law in force in India was also required to be decided on conclusion of the trial by framing appropriate issue on that aspect and was not available to be raised in the application filed under Order VII Rule 11 CPC.

19. A bare perusal of the order passed by the learned single Judge makes it clear that the learned single

Judge has apparently decided the matter as if he is sitting as an appellate authority over the order passed by the foreign court. Whether the foreign judgment obtained by the plaintiff was conclusive or not is to be decided in the light of the provisions contained in Section 13 CPC, but it can be done so only at the conclusion of the trial and not at the threshold because a perusal of the plaint or the documents filed along with the plaint do not lead to such a conclusion.

20. For the aforesaid reasons, the order passed by the learned single Judge applying the principle contained in Order VII Rule 11 of the CPC cannot be sustained and the matter is to be decided on merit after conclusion of the trial. It is obvious that an appropriate issue or issues relating to conclusiveness of the foreign judgment and other connected matters would be framed and the matter has to be decided on merits.

21. Along with the application filed under Order VII Rule 11 CPC, other applications and objections relating to other interlocutory applications has been considered by the learned single Judge, who has observed that since the plaint itself is rejected all other connected applications were to be dismissed. Now that the order of rejection of the plaint is found to be vulnerable and the suit is required to be decided on merits, the consequential dismissal of other applications cannot be upheld. Learned single Judge is therefore required to consider the interim applications afresh at an early date.

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22. In the result, O.S.A.No.288 Of 2004 is allowed and O.S.A.Nos.289 to 292 of 2004 are disposed of accordingly. Consequently, CMP.Nos.20362 to 20366 of 2004 are closed.

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Sd/
Asst.Registrar (Crl Side)
Dated : 11.3.2005

Original Side Appeals No.288 to 292 of 2004

S.R.SINGHARAVELU, J.,

While agreeing with the conclusions of the learned Brother Judge, I wish to add the following:

2. This suit was instituted to enforce the rights conferred by a decree dated 18.04.2003 against the respondent/defendant passed in U.S.A in Case No.KCO38373. As it was mentioned in para 25 of the present plaint that the suit was instituted only to enforce the rights conferred by a decree of a foreign court, in order to testify the applicability of section 13 (f) CPC as to whether that decree obtained in U.S.A. sustains a claim founded on a breach of any law in force in India, the cause of action in that American suit becomes relevant.

3. In para 7 of the complaint in case No.KCO38373, which was filed against respondent on 06.03.2002, mention was made as if the cause of action arose in or about November 2001, when it was learnt for the first time that this respondent/defendant had received payments from the Med-Tech USA account in sums totalling over $250,000 during the year 1998.

4. But there are averments made in this plaint improbabilising the so called cause of action, allegedly arose in November 2001, for filing a complaint against this respondent in American Court. Para 10 and 11 reads as follows:

> "...Accordingly, Girish Reddy and his family including the defendant (underline supplied by us) herein and his wife agree to refund the entire extent of misappropriation of funds of the plaintiff..
> ...Accordingly, a promissory note dated 1st October,1998 was prepared in the name of Girish Reddy ..... his father-in-law Jayachandra Reddy and in and by which the aforesaid promisors jointly and severally admitted liability of sum of USD 1,400,000..."

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5. A careful reading of the above mentioned averments in the present plaint would actually improbabilise the following allegations made in para 7 of the complaint filed in U.S.A.Court against this respondent/defendant.

> "...In or about November 2001, incident to legal action against Girish Reddy, plaintiff obtained bank records of Med-Tech USA and thereby learned for the first time that Jay Reddy had received payments from the Med-Tech USA account in sums totalling over $ 250,000 during the year 1998".

6. If this cause of action of November 2001 in filing the American suit against this respondent is improbabilised or falsified, then, the above suit against the respondent filed in America becomes out of time, as the other cause of action mentioned therein arose in 1998, thereby indicating application of Section 13(f) CPC.

7. Anyway before arriving at a particular conclusion either way, both sides must have been given opportunity to purforth their respective case. This may be considered by the learned single Judge in future along with further factor that while the notice dated 12.07.2001 of the appellant and the averments in para 7 of the complaint in U.S.A. against this respondent mentioned a liability of $ 250,000; para 11 of this plaint mentions as if this defendant also admitted liability jointly and severally with others for US $ 1,400,000. This inconsistency may be considered at the time when claim of interim relief is considered afresh by the learned single Judge. Parties are at liberty to urge for early disposal.

8. With these words, I agree with the finding of the learned Brother P.K.MISRA, J that the rejection of plaint is premature and is liable to be set aside and all such disputes shall be decided upon framing issues.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

The Sub Asst.Registrar,
Original Side, High Court,
Madras

+ 5 ccs to Mr.P.R.Raman, Advocate SR Nos.9220 to 9224

+ 5 ccs to M/S.K.Aparna Devi & R.Ramakrishnan, Advocate SR Nos 8931 to 8935.

JUDGMENT IN
OSA.Nos.288 to 292/04

GM(CO)
SR/11.3.2005

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